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RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Tenth periodic report of States Parties due in 1990

Addendum

CHILE*

[15 January 1992]

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* This report contains the ninth and tenth periodic reports, due on 20 November 1988 and 20 November 1990 respectively.

For the seventh and eighth periodic reports submitted by the Government of Chile and for the summary records of meetings of the Committee during which these reports were examined, see:

Seventh periodic report - CERD/C/117/Add.3 (CERD/C/SR.735),
Eighth periodic report - CERD/C/148/Add.4 (CERD/C/SR.846).

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I. HISTORICAL OUTLINE

1. The Chilean nation began to take shape with the conquest and colonization carried out by Spain from 1541 onwards. The territory was inhabited by indigenous peoples with various names who were brought into political subjection and exposed to severe economic exploitation and cultural disintegration.

2. Nevertheless, a significant group of these peoples - the Mapuches - resisted this colonization and established themselves to the south of the Bío-Bío River as a people practically independent of the Spanish Crown. In addition, they signed numerous treaties ("parlamentos") with the Government of Chile.

3. Moreover, in the central zone of the country during the eighteenth century the authorities established a system of "reductions" (Indian resettlements) to protect the lands of the Picunche Indians to a certain extent from the greed of the conquerors.

1. Evolution of the situation of the Mapuches and Picunches

4. With the advent of independence from Spain, Chile's leaders, imbued with the liberal spirit of the time, sought in the utmost good faith to integrate the indigenous people as Chilean citizens with the same rights as everyone else:

> "The Spanish Government, in accordance with the maxims of its inhuman policy, called the indigenous inhabitants of America by the degrading name of 'natives'. They were a wretched race, paying an annual tribute and deprived of all political representation and any means of escaping from their servile condition ... In a word they were born slaves, lived without a share in the benefits of society, and died covered with obloquy and in abject poverty. The liberal system which Chile has adopted cannot allow this precious section of our species to continue in such a downtrodden state. Hence I declare that henceforth they must be called Chilean citizens, free like the rest of the inhabitants of the State, with whom they shall have equal voice and representation, being empowered like them to conclude any type of contract, to defend their interests, to enter into matrimony, to engage in trade, to select the crafts for which they have a bent and to enter upon the professions of letters and arms in order to obtain political and military employment suited to their aptitudes" (Proclamation of the Supreme Director of the Republic of Chile, Bernardo O'Higgins, 4 March 1819).

5. At the same time, aware that the indigenous inhabitants were increasingly losing their lands to people with no right to them, the independence leaders through a decree dated 1 July 1813 sought to regulate the "Indian settlements" by transforming them into "townships" ("villas"). Article 11 of that decree stated that:

> "The Government recognizes that disputes between the rough, forsaken and wretched class of Indians and the powerful landowners surrounding

them ... concerning encroachments and oversteppings of boundaries are always decided to the advantage of the wealthy and consequently cases for restitution will regularly be settled in favour of the Treasury."

6. Despite its noble intentions, this liberal egalitarianism led in the central zone to the rapid disappearance of the indigenous peoples' lands, which were annexed to the great estates through various mechanisms and forms of sharp practice.

7. In the same way to the south of the Bío-Bío there began an increasing process of purchase at very low prices and misappropriation of the lands of the indigenous inhabitants on the part of colonizers and adventurers. It must be remembered in this respect that the system of indigenous land ownership was very different from that typical of Chilean society; the land was communally owned, its boundaries were not precisely drawn and it was not legally registered. The process was brought to a halt on the Rio Malleco by the armed resistance of the Mapuches.

8. Later, in 1866, laws were drafted designed to allow the Chilean State to take over the whole of Mapuche territory (Araucanía). These laws were resisted by the Mapuche people until in 1881 they were defeated militarily in a series of battles ("the pacification of Araucanía").

9. Under these laws, a process of settlement of indigenous peoples in certain territories began with the help of joint titles of ownership ("titulos de merced") which retained the collective nature of this form of property. The rest of the land was auctioned off to private persons or left to indigenous people further south but without legal protection.

10. The extreme injustice of this division of the land can be seen in the fact that of the roughly 10 million hectares covered by the regions in the south of the country inhabited by the Mapuches, the State granted them some 500,000 hectares under the joint titles of ownership, left them another 500,000 hectares but without legal protection (in Valdivia and Osorno), and auctioned off about 9 million hectares to non-indigenous private persons.

11. Obviously, for the Mapuche people this process of resettlement meant a great political, economic and cultural change for the worse. In reaction to it, several indigenous organizations in the 1920s asked for a "new resettlement" and some Mapuches argued for the colonization of land further south, that is in continental Chiloé and Aysén.

12. Innumerable people and political leaders of that time considered that the reason for indigeneous poverty was that the indigenous inhabitants had no clear idea of private property and that to the extent that they divided the indigenous communal lands into individual plots they would be able to overcome their poverty.

13. Consequently, between 1927 and 1931 laws were adopted that permitted indigenous communally held land to be divided up at the request of only one-third of the members of the community. In addition provisions were approved that made it easy to misappropriate the indigenous lands left without legal protection in Valdivia and Osorno.

14. Later, in 1938, with the advent of the Popular Front Government and the rising tide of indigenism in Chile and America as a whole, it was laid down that for communal lands to be divided up a majority of the members of the community must so request. This led in practice to the almost complete cessation of any divisions.

15. Later the struggle continued between on the one hand the partisans of the complete dividing-up of indigenous communal lands in the interests of complete assimilation of the indigenous peoples into Chilean society and on the other hand those who supported the indigenous inhabitants in their efforts to preserve their traditional forms of property and to retain their original joint titles of ownership. It must be remembered that in addition to the continuation of irregular or fraudulent purchases the indigenous inhabitants were affected by the fact that in many cases there were overlaps between lands covered by the joint titles of ownership and those that were the subject of auctions of estates to private persons.

16. A landmark in favour of the indigenists was the approval in 1953 of a law that established the Indigenous Affairs Board and also gave it authority to expropriate estates in order to restore them to indigenous communities or individual indigenous inhabitants, although these options were only exercised for a very short time. Another significant element in the law was the establishment of scholarships for indigenous inhabitants, although not much was done in that field either.

17. A more ambivalent instrument was Act 14.511 of January 1961, which restored the requirement that consent of one-third of the members of a community was sufficient to enable that community to be dissolved, although on the other hand it also recognized that lands had been wrongfully taken over and established a system for recovering them. This system laid down that land that had been wrongfully occupied for less than 15 years could be "restored" by bringing a case before the courts, while land that had been wrongfully occupied for more than 15 years could be expropriated but against payment of compensation.

18. In any case, the acts passed between 1931 and 1961, always had among their objectives dividing up the indigenous community-held land and promoting the development of the resultant plots either through encouragement of cooperatives or through systems of loans from the State Bank.

19. As a result of the profound changes in Chilean society that were attempted between 1964 and 1973, new legislation on indigenous affairs began to take shape which was discussed by the indigenous organizations in 1966 and was given practical effect in Act 17.729 of September 1972. This was part and parcel of the agrarian reform of the time and hence one of its main objectives was to increase the amount of land available for the indigenous communities. Another basic objective was to promote education and technical assistance for indigenous people. To help in this, an Institute for Indigenous Development was created as a State body to coordinate policies in this domain, including plans for agricultural and livestock development, scholarships and the establishment of student hostels. Thus, in 1972 some 6,000 scholarships were granted, thanks to which hundreds of young Mapuches were able to study at Chilean universities.

20. Nevertheless, this law was adopted in the spirit of the times, which was still "integrationist" in nature, in that it still proposed to fully assimilate the indigenous people - this time without coercion - into the national community as a whole.

21. With the coup d'état of September 1973 the status quo ante was rapidly restored. Thus, the estates which had been given back to indigenous people through expropriation by virtue of their recognition as wrongfully occupied lands, were restored to their previous owners. Moreover, educational promotion activities were reduced to a minimum.

22. Lastly, in 1978, Decree-Law 2.568 on the Division of Indigenous Communal Lands was adopted. As its name indicates, its sole objective was to put an end to the communities. It provided that division could be carried out on the application of any occupier of the land and established for that purpose a speedy cost-free procedure. Despite the fact that the Decree prohibited change in ownership of the resultant plots for 20 years, use was made of the legal device of leasing for 99 years with a view to enabling factual appropriation of these lands.

23. Thus throughout the republican history of Chile there has been discrimination against the Mapuches in the sense that their historical and cultural identity and specifically their traditional forms of economic and social organization have not been respected. This was in contradiction to the International Convention on the Elimination of All Forms of Racial Discrimination, which calls for respect for the rights of different ethnic groups to develop as such.

2. Evolution of the situation of the Aymara people

24. It will be valuable to give a separate historical survey of this ethnic group, which lives in the Andean sector in the extreme north of Chile.

25. As a result of victory in the War of the Pacific (1883), Chile acquired the provinces of Tarapacá and Antofagasta, on whose territory a small part of the Aymara people lived; the bulk of them lived and still live in the high plateau ("altiplano") region of Peru and Bolivia.

26. Since then, Chilean governments have endeavoured to "assimilate" them fully in the national culture, breaking them up as a human group and destroying their traditional forms of communal property.

27. Indeed, the existence of communal lands belonging to the Aymaras was completely ignored by Chilean legislation and the indigenous legislation of 1883 by which the State granted the Mapuches joint titles of community ownership was not extended to the Aymara. Hence, their ancestral communal lands were considered by the Chilean State as State property, since they were not individually registered.

28. In the same way, the traditional forms of authority existing within the Aymara communities ("caciques") were not recognized by the State, which established the post of "district inspector", an official appointed by the

Governor or Intendant from among the local people; he acted as a link with the indigenous inhabitants and his function was merely to inform the public administration.

29. Both processes led to a multitude of conflicts between the Aymaras for the possession of land and water and finally to their disappearance as an organized socio-cultural group.

30. It was only during the period 1964-1973 (the Frei and Allende Governments) that the State took any action to improve the lot of the small communities existing in the oases in the provinces of Tarapacá and Antofagasta and in the coastal and foothill areas of cultivation.

31. After the coup d'état of September 1973, for reasons of "national security" efforts were accentuated to assimilate the Aymara culturally and an iron political control was established over them through a modified version of the Neighbourhood Councils Act ("Ley de Juntas de Vecinas").

32. However, without a doubt, the most serious measure to which they were subjected during the dictatorship was the new Water Code (Law-ranking Decree 1.122 1981). This made it possible to establish a right to obtain a water supply from land belonging to a third person. This was a serious blow to the interests of the Aymaras, since traditionally they had never registered their rights over the waters that cross the Andean region, where that vital resource has always been in short supply. And although the decree does provide for forms of publicity enabling those whose rights are supposedly affected to put forward their objections, this does not work for the Aymara people, given their lack of information and economic resources.

33. In the final analysis, this law denies the Aymara communities as such any possibility of applying for ownership of this real right of water supply. It only permits, in very recondite terms, the establishment of an ad hoc legal community, and even in that case any member of the community has a right to make over his right to another person.

34. Application of this law has obviously been very detrimental to the Aymara people. The large mining companies in the region have made numerous applications to establish rights of supply from waters belonging to the Aymara people, thus depriving them of an element vital for the development of their agricultural activities, and by intensifying the migratory process bringing about the disintegration of their communities.

35. Moreover, the situation of the Aymaras has also deteriorated as a result of the legal uncertainty regarding the ownership of their lands. Although in recent times no special provisions have been adopted in that respect, the interest of the State and of private persons in these lands and the interest of the Aymaras themselves in regularizing the legal position regarding them (especially Aymaras who are being forced to emigrate) have recently given rise to serious conflicts between the Aymaras and other persons or bodies and also between different Aymara communities and even inside single communities. The conflicts arise generally because of overlapping of the areas registered. Particularly serious is the fact that the National Parks established by the State cover about 40 per cent of the communal Aymara lands on the high plateau.

36. As a result of this situation the Aymara organizations have recently been calling on the State to give legal recognition to the lands which they inhabit and henceforth to protect the communal nature of those lands.

37. To sum up, the Aymara people, like the Mapuches, have continuously suffered from discrimination in the sense that the Chilean State has striven to assimilate them, thus destroying their cultural and social identity.

3. Evolution of the situation of the Rapanui people

38. The Chilean State annexed Easter Island (Rapanui) on 9 September 1888. The annexation was carried out in agreement with the aboriginal chiefs through the signing of a document which stipulated:

> "We the undersigned, chiefs of Easter Island, hereby cede for ever and without reservation to the Government of the Republic of Chile full and entire sovereignty over the said Island, while at the same time conserving the titles of chief with which we have been invested and which we enjoy at this moment".

39. In addition to annexing the island, the Chilean State bought or rented out a substantial part of its territory which had previously been sold by the indigenous inhabitants to foreigners (a Tahitian, a Briton and a Frenchman).

40. From 1895 onwards these lands passed under the control of a Frenchman, Enrique Merlet*, who had settled in Chile and who reduced the islanders to a state of serfdom. Thus, they were confined to an area of 1,000 hectares (the total area of the Island is some 16,000 hectares), their animals and possessions were seized and their free movement in the island was prohibited. Moreover, the Company employed an important proportion of the islanders (50 out of a total population of 214) for building stone walls and for tasks connected with livestock rearing and subjected them to severe exploitation. According to a document drawn up by the Council of Elders of Rapanui in 1987:

> "The foreigners, in the belief that they had rights over the Easter Islanders, made them work as slaves, even the kings of Rapanui. The Company made all women aged over 14, whether single or married, and all men over the age of 14, including the very old, perform forced labour, which they had to carry out from sunrise to sunset without rights to food, wages or rest".

41. In June 1896 a decree was promulgated which made Easter Island a Maritime Sub-Delegacy dependent on the Government of Valparaíso and in charge of a Maritime Sub-Delegate.

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* and in 1903 of the Company for the Exploitation of Easter Island (Williamson Balfour and Company) of which Merlet was Chairman and 25 per cent of whose shares he owned.

42. As a result of the abuses committed by the Company against the indigenous inhabitants the Government of Chile began to develop rules for protecting them. Of special importance in that respect was Decree No. 81 of the Ministry of Defence, issued in April 1936, which established that the people resident on the island would enjoy the rights granted to them by the Constitution and laws of the Republic and made it obligatory for the authorities to ensure the "legitimate constitution of families" and to provide obligatory primary education for children over seven years of age; it regulated the conditions of work in the island by applying the provisions of the Labour Code as a general rule. Similarly, in 1935 Easter Island was declared a National Park and National Historical Monument.

43. Meanwhile, with a view to putting an end to land conflicts with the company exploiting Easter Island the Government in 1933 registered the whole of the land on the Island in the name of the State. Despite its laudable intentions, this completely ignored the ancestral rights of the Rapanui people.

44. Nevertheless, persistence of protests against abuses committed against the Easter Islanders led the Government of Chile to abrogate the contract with the Company in 1952.

45. Accordingly, in 1953 the Chilean Army took charge of all the property on the Island and assumed responsibility for administering it. Authority continued to be in the hands of the Maritime Sub-Delegate and the office of honorary mayor was instituted, generally filled by an appointee of the Sub-Delegate. Administration of justice continued in the hands of the Easter Islanders, through two judges elected by the population who applied punishments or fines after previous consultation with the Sub-Delegate. The population of the island then amounted to 785 inhabitants.

46. Despite the progress made in the previous years many injustices persisted that affected the Easter Islanders; restriction on free access to the interior of the Island was maintained and they were prohibited from leaving; the unpaid forced labour imposed by the Company persisted through the institution of what were called "State Mondays"; the Island's authorities were not elected democratically by the islanders and they did not enjoy the universal suffrage laid down in the 1925 Constitution.

47. Protests and pressure on the Government by the Easter Island community led in 1965 to an end of the restriction on travelling along the shores of the Island. Similarly in that year Easter Island passed under civil administration and the estate administered by the Army was transferred to the Production Development Corporation (CORFO); the hospital passed into the hands of the National Health Service.

48. In March 1966 Act 16.411 was passed creating the Easter Island Department of the Province of Valparaíso, a municipality of the commune of the same name and a court of major jurisdiction. Moreover, special provisions were laid down for the organization and functioning of the various public services that were established in the Department. It was stipulated that for offences committed against family order and public morality and against property committed by natives of the Island on its territory should be punished with penalties one step below the minimum laid down in the law for those offences. Citizens of the Island were given the right to vote.

49. As a result of this Act numerous persons arrived from the mainland to take charge of the new services and public departments created. Thus, the number of people from the mainland in the Island increased from 143 in 1965 to 538 in 1966.

50. In 1967 the Government established the National Easter Island Commission, made up of bodies from various ministries and public departments, with a view to conserving the archaeological heritage of the Island and ensuring respect for and preservation of the language, customs and traditions of the local population.

51. In 1971 the Government created the Easter Island Departmental Council, chaired by the Governor and made up of 14 members representing the various services and public departments in the Island as well as various sectors of the population (neighbourhood councils, cooperatives, etc.), with a view to guiding the Governor and the National Commission in the adoption of measures to promote economic, social and cultural development.

52. With the coup d'état of September 1973 the Departmental Development Council was abolished, the mayor was appointed by the authorities and the cooperatives were dissolved.

53. Under the process of regionalization promoted by the dictatorship, Easter Island Province was created in December 1975 as part of Region V.

54. In October 1979 the previous Government through Decree-Law 2.885 established procedures for the granting of land ownership titles and administration of State lands in Easter Island. This Decree-Law empowered the President of the Republic to recognize ownership titles to State land - urban or rural - in the Island in favour of Chileans originally from the Island or whose mother or father had been born in the Island and who could prove five years' residence therein and their actual and continuous possession of their property for at least 10 years before entry into force of the Decree-Law, provided that no suit had been brought disputing their possession.

55. The same Decree-Law laid down a time limit of one year from the date of its promulgation for applying for the grant of ownership title from a Special Resettlement Commission on the Island. Later, in July 1981, Act 18.012 was promulgated which fixed a new time limit of two years from the date of its promulgation for obtaining recognition of the rights established under the Decree-Law 2.885.

56. This legislation was an attempt to legitimize the ownership which the State had arrogated to itself over the territory of Easter Island in 1933. The Easter Islanders therefore reacted against it by refusing in their majority to ask the State to grant titles. Accordingly, in August 1988 more than 700 native inhabitants of the island, organized by the Council of Elders, entered in the ordinary courts a civil writ against the State asking the courts to specify that the State's right to the ancestral Rapanui lands should be restricted to those which in 1933 had had no owner. This writ is still being considered before the courts.

57. In conclusion, observance of the human rights of the Easter Islanders has slowly but steadily improved in the course of time. From a condition of semi-slavery when the island became Chilean territory the Rapanui have now become Chilean citizens, although they are still restricted in their rights to property over the land on the Island.

II. POLICIES OF THE DEMOCRATIC GOVERNMENT TO ELIMINATE INFRINGEMENTS OF THE RIGHTS OF CHILEAN INDIGENOUS PEOPLES

58. Before anything else, it is important to point out that out of Chile's total population estimated in 1990 at 13,173,347, the indigenous population properly so-called is estimated as:

Mapuches	between 500,000 and 600,000
Aymaras	35,000
Atacameña indians	3,000
Alacalufes	100
Kawashkar	50
Yagan	4
Rapanui (Easter Islanders)	3,090

59. Aware that during the whole history of the Republic there has been strong discrimination against the indigenous peoples in the sense that their cultural identity and their own forms of economic and social organization have not been respected the democratic Government is promoting a set of constitutional and legal reforms and signing new international agreements with a view to putting an end to these forms of racial discrimination. They are as follows:

1. Proposed constitutional reform

60. On 8 October 1991, the Government sent to the National Congress a proposal for reform of the Constitution to enable the indigenous peoples of Chile to live in a society that pays respect and consideration to the essential elements in the customs and special features of those peoples.

61. To achieve that end, it has been considered expedient to devote constitutional texts to these peoples and make it clearly apparent that the exceptional protection which the law may give to indigenous communities in any sphere of economic importance cannot be objected to as discriminatory.

62. In practice, the reforms proposed are as follows:

(a) Article 1

In this article, which lays down the main constitutional principles on which Chilean society is based, it is proposed to add as a final paragraph:

"The State will ensure the adequate legal protection and development of the indigenous peoples that form part of the Chilean nation".

(b) Article 19

In this article, which defines the constitutional rights and duties of the members of Chilean society, it is proposed to add to its paragraph 22, which stipulates that there shall be no arbitrary discrimination by the State in economic affairs a clause saying:

"The law may also establish certain benefits and exemptions in favour of the indigenous communities".

(c) Article 62

In this article, which lays down the ways in which bills may be originated in respect of matters that fall exclusively within the purview of the President of the Republic, it is proposed to add a section 7 which states:

"To establish systems of legal protection and benefits or exemptions for the development of the indigenous peoples".

2. Signature of ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)

63. The democratic Chilean Government was one of the first to sign this Convention (on 27 December 1990) which constitutes the international community's most comprehensive attempt to recognize and protect the rights of the indigenous peoples.

64. It stipulates that indigenous inhabitants shall be recognized as peoples (although this does not mean that they are thereby granted the right of free determination in the sense of creating a sovereign State entity); the right of indigenous peoples to self-government and self-development within the States in which they live; the right to maintain and strengthen their identities, languages and religions; recognition and protection of their rights over land and territories; and the recognition, promotion and protection of their economic, social and cultural rights.

3. Bill on the protection, advancement and development of the indigenous peoples

65. In addition, on 8 October 1991 the democratic Government submitted to the National Congress for its consideration a bill designed to ensure respect for the specific rights of about 1 million Chileans belonging to the various original ethnic groups in Chilean territory.

66. For this purpose, during 1990 an extensive democratic discussion was held in the indigenous communities of Chile in regard to the content of the bill. Hundreds of meetings were held in the communities, delegates were elected to 15 provincial congresses and finally a National Congress of Indigenous Peoples was held for the specific purpose of discussing the Bill.

67. The main elements in the bill that will benefit the Chilean indigenous peoples are as follows:

(a) Recognition by the State of the fact that the indigenous peoples living in Chile possess cultures of their own that include knowledge, techniques, institutions, expressions and values that distinguish them from the overall culture and that these cultures are a heritage of the Chilean nation;

(b) Legal recognition of the indigenous communities whether they are territorial in nature or are grouped in associations for specific purposes;

(c) Protection of the lands and water resources of the indigenous inhabitants so that they cannot be acquired by non-indigenous people and are exempt from payment of land taxes;

(d) The right of indigenous communities to exercise activities as a community in the sacred sites, cemeteries, nguillatún courts (sites for Mapuche religious ceremonies), sports grounds and other areas for cultural or recreational use that belong to the State;

(e) Making it possible for indigenous inhabitants to have access to the lands and waters that belong to them ancestrally and are necessary for their subsistence by establishment of an Indigenous Land and Water Fund to buy lands that will be handed over free of charge or against payment to the indigenous communities or to individuals belonging to indigenous peoples;

(f) Creation of Indigenous Development Areas in the territories where they lived ancestrally and in zones of dense indigenous population as a basis for the establishment of development plans and programmes that will promote adequate exploitation of the indigenous lands and ensure that their ecological balance is maintained.

(g) Creation of an Ethnic Development Fund with a view to financing special programmes for the development of indigenous peoples and communities;

(h) Recognition of the indigenous languages as official languages in addition to Spanish in the Indigenous Development Areas;

(i) Establishment in areas of dense indigenous population of a system of bilingual inter-cultural education that will prepare indigenous students for suitable employment both in their society of origin and in national society as a whole;

(j) Development of special scholarship, literacy and vocational programmes and establishment and maintenance of student hostels for indigenous students;

(k) Introduction into the national educational system of elements that will enable students to understand and appreciate indigenous cultures and peoples;

(l) Encouragement in regions of dense indigenous population of the creation of communication media and radio programmes in the indigenous language;

(m) Prohibition of the replacement of indigenous place names by other, non-indigenous names;

(n) Protection of the historical, archaeological and cultural heritage of the Chilean indigenous peoples, including the establishment of Institutes of Indigenous Culture in the main cities of Chile;

(o) Making it mandatory for State administrative services and territorial organizations when they are dealing with matters that have repercussions on or are related to indigenous questions to listen to and take into account the opinions of the indigenous organizations;

(p) Representation of the indigenous organizations in representative regional and community political bodies and other groups at intermediate level in zones where there is a high concentration of indigenous population;

(q) Creation of the National Indigenous Development Corporation as a public service with the task of planning, coordinating and implementing State activities in favour of the integrated development of indigenous peoples, communities and persons, especially in the economic, social and cultural spheres, promoting their participation in national life and resolving the practical problems that affect them. It will in particular be responsible for the Indigenous Lands and Water Fund, the Indigenous Development Areas and the Ethnic Development Fund; the Corporation will be directed by an Executive Council of 23 members' of whom 12 will be appointed by the President of the Republic and 11 elected by the indigenous peoples (two for the Aymara; one Atacameño; one Rapanui; six Mapuches and one elected by indigenous people who live in Santiago);

(r) Recognition of the customary law and of customs and institutions peculiar to the indigenous peoples provided they are not incompatible with the fundamental rights laid down in the Constitution and in human rights treaties ratified by Chile;

(s) Institution of special procedures for disputes concerning the land of indigenous people in order to provide them with an adequate defence, including the legal aid and the establishment of special branches of the Appeal Courts in areas of indigenous population;

(t) Establishment of indigenous magistrate's courts to deal with conflicts and minor disputes involving indigenous people. The magistrates will be appointed by the President of the Republic on the basis of a list drawn up by the indigenous communities;

(u) Specifically in the case of the Huilliches of Region X recognition of their traditional cacique system is planned;

(v) For the Aymaras and Atacameños in the north of Chile special protection is planned for the waters that supply their communities, as well as the recovery and resettlement of places and lands at present abandoned through lack of water;

(w) In the case of the indigenous communities surviving in the southern valleys of Region XII it is expressly stipulated that the plans of the National Indigenous Development Corporation must ensure: (i) support in regard to health and sanitation (ii) appropriate systems of social security (iii) vocational and organizational training and (iv) self-subsistence programmes for their members;

(x) As concerns the Kawashkar community in Puerto Edén in Region XII the following special rules are laid down: (i) recognition of the Kawashkar Council as a body that must participate actively in all plans and programmes affecting it and (ii) the National Indigenous Development Corporation in conjunction with the Council is to define an area for Kawashkar resettlement and development and a special fishing and hunting zone for them;

(y) In the case of indigenous inhabitants in the towns the National Indigenous Development Corporation is to encourage and coordinate with the municipalities and government offices plans and programmes of benefit to them and that will help them to maintain their cultural identity; in particular there is to be coordination with the Ministry of Education on the bilingual intercultural education programmes, with the Ministry of Housing on the development of housing programmes, and with the Ministry of Labour on the development of vocational training programmes for indigenous workers;

(z) In respect of the Rapanui people special legislation for their benefit is being studied and will soon be submitted to Congress for its consideration.

III. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

68. As has been pointed out, in Chile racial discrimination has been extremely acute throughout its history but it has taken the form of wishing to abolish the specific identities of certain ethnic groups or minorities by trying to make them as equal as possible with the rest of the national community.

69. In this direction the Pinochet dictatorship took the trend to an extreme by stating that "In Chile there is no difference between indigenous and non-indigenous peoples" and that "The Government does not agree with discriminating between Chileans and indigenous persons or with the new concept of self-determination and individual development of the indigenous population in isolation from and excluded from the rest of the community" (ILO, Partial revision of the Indigenous and Tribal Populations Convention, 1957, report VI (2) Geneva 1988).

70. Because of the above, a basic element in the task of eliminating racial discrimination in Chile is "respect for differences" not their abolition. The task is therefore to comply especially with what is laid down in article 1 of the Convention when it stipulates that:

> "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups ... in order to ensure such groups ... equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination."

71. Thus, all the provisions mentioned in the previous section relating to reform of the Political Constitution of the State and to the Bill on the Protection, Advancement and Development of the Indigenous Peoples have precisely the purpose of distinguishing on the basis of race the various ethnic groups existing in Chile in order in that way to respect the identity of each of them.

72. As for racial discrimination understood as a distinction which has the purpose of impairing the enjoyment by various ethnic groups of their fundamental human rights on an equal footing, the Constitution and laws of Chile do not countenance it in any way, i.e. they stipulate that all citizens of the Republic are fully equal before the law.

73. Thus, article 1 of the Constitution states "Men are born free and equal in dignity and rights". Article 19, paragraph 2, of the Constitution states: "Equality before the law. In Chile there are no privileged persons or groups. In Chile there are no slaves, and those who set foot on its territory become free". In paragraph 3 of the same article the Constitution lays down "Equal protection under the law in the exercise of their rights".

74. Moreover, in more specific social spheres the Constitution also stipulates the absence of any distinction that would be detrimental to the rights of particular groups or persons.

75. Thus, paragraph 9 of article 19 stipulates "The State protects free and equal access to activities for the promotion, protection and recovery of health and rehabilitation of the individual". Paragraph 10 of the same article states "Basic education is mandatory; to that effect the State must finance a free system designed to ensure access thereto by the entire population". Paragraph 16 of the same article states:

> "Every person shall have the right freely to seek and freely to choose employment with a fair remuneration.
>
> "Any discrimination which is not based on personal competence or fitness shall be prohibited, save that the law may in specific cases require Chilean nationality or prescribe age limits".

Paragraph 17 of the same article provides for all citizens "Admission to all public offices and posts with no requirements other than those imposed by the Constitution and the law".

Paragraph 18 of article 9 states that there is a universal right to social security and that "The action of the State shall be directed towards guaranteeing access of all inhabitants to uniform basic benefits, whether granted by public or private institutions".

Paragraph 20 of article 9 calls for "Equal distribution of taxes in proportion to income or in the progression or form established by law and equal distribution of other public charges".

Finally paragraph 22 of article 9 states that there shall be:

"No arbitrary discrimination in economic matters by the State and State bodies".

76. Furthermore, in line with what has been said throughout this report the Bill for the Protection, Advancement and Development of the Chilean Indigenous Peoples that was recently submitted by the Government to Parliament contains only two articles designed to prevent racial discrimination in the sense of distinctions that impair equality of fundamental rights.

77. Thus, article 29 points out that:

"The National Indigenous Development Corporation (CONADI), with a view to protecting the indigenous cultures and peoples from discriminatory, derogatory and disparaging actions and behaviour, must strive to eradicate any sign of discrimination that exists in the Chilean State and Chilean society."

Article 106 stipulates that:

"The National Indigenous Development Corporation will encourage and coordinate with ministries, municipalities and government offices plans and programmes aimed at achieving better standards of well-being for indigenous people living in the cities, to ensure the maintenance and development of their own cultures and identities, and to avoid any discrimination to which they may be subjected, particularly in relation to work."